

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 7702 of 2023

Md. Omar Faruque

...Convict-appellant

-Versus-

The State and another

...Respondents

Mr. Mohammad Mosiul Alam, Advocate with

Mr. Md. Jamil Hoque, Advocate

...For the convict-appellant

Mr. Md. Akhtaruzzaman, D.A.G with

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Md. Kaium, A.A.G

...For the State

Ms. Chowdhury Nasima, Advocate

...For the respondent No. 2 (ACC)

Heard on 18.02.2025, 23.02.2025, 27.04.2025,

29.04.2025, 30.04.2025 and 13.05.2025

**Judgment delivered on 19.05.2025**

This appeal is directed against the impugned judgment and order of conviction and sentence dated 19.07.2023 passed by Special Judge, Noakhali in Special Case No. 18 of 2019 convicting the accused Md. Omar Faruque under Section 408 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 5,00,000(five lakh), in default, to suffer imprisonment for 3(three) months and convicting him under section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him thereunder to suffer rigorous imprisonment for 1(one) year.

The prosecution's case, in short, is that the accused Md. Omar Faruque was the Principal (dismissed) of Char Alexander Kamil Madrasha, Lakshmipur and the complainant Hafez Md. Main Uddin was the Guardian representative of the Managing Committee of Char Alexander Kamil Madrasha, Lakshmipur. He filed a complaint petition on 09.10.2017 in the Senior Special Judge, Lakshmipur

stating that the accused Md. Omar Faruque was suspended unanimously in the meeting of the Governing Body held on 22.12.2016 with effect from 01.01.2017 for misappropriation of fund of the said Madrasha and other illegal activities. The accused in connivance with A.R. Hafiz Ullah, the Vice-President of the Managing Committee, jointly issued the Cheque No. 7349333 dated 29.12.2016 for payment of Tk. 3,12,615, Cheque No. 7349334 dated 31.01.2017 for payment of Tk. 1,19,424 and Cheque No. 7349335 dated 20.02.2017 for payment of Tk. 52,856 total Tk. 4,84,895. The accused withdrew the said amount from the bank and misappropriated. Although he was suspended by the Managing Committee on 22.12.2016 but he did not hand over the charge till 22.02.2017. In the complaint petition, it has been alleged that the accused forged the signature of the Vice-Chairman of the Managing Committee and there is no entry of the said expenses in the cash book or register from 12.01.2015. He also misappropriated Tk. 20,00,000(twenty lakh) without approval of the managing committee. The accused also misappropriated the salary amounting to Tk. 36,100 of the Teacher Ahammad Ullah, index No. 324048. The accused also had withdrawn 03 metric tons of rice valued at Tk. 60,000 in the year 2015-2016 and misappropriated the said amount. He also misappropriated Tk. 1,40,000 of the fund of the college. He misappropriated 1 month salary of the teachers total Tk. 4,50,000 and also misappropriated Tk. 90,000 from the fund of the college. In the meeting dated 13.09.2017 presided over by the Additional Deputy Commissioner (Revenue), Lakshmipur authorized the complainant to file the case against the accused. The complainant filed the case on 09.10.2017.

After filing the complaint petition, the Special Judge, Lakshmipur by order dated 09.10.2017 directed the Deputy Director, Anti-Corruption Commission, Combined District Office, Noakhali to submit the report within 27.11.2017. After that, DD Md. Talebur

Rahman, Anti-Corruption Commission, Head Office, Dhaka after investigation found the prima-facie truth of the allegation made against the accused and submitted charge sheet on 11.04.2019 against the accused under sections 406/420/511 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947.

During the trial, charge was framed against the accused under sections 406/420/511 of the Penal Code, 1860 and Section 5(2) of the Prevention of Corruption Act, 1947. The prosecution examined 10(ten) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and the defence declined to adduce any D.W. At the time of argument, the accused filed an application to the trial Court on 09.07.2023 and submitted the documents to consider those documents as submitted under Section 342 of the Code of Criminal Procedure, 1860. After concluding the trial, the trial Court by impugned judgment and order convicted the accused and sentenced him as stated above against which he filed the instant appeal.

Learned Advocate Mr. Mohammad Mosiul Alam appearing along with learned Advocate Mr. Md. Jamil Hoque on behalf of the appellant submits that three cheques were issued under joint signatures of the accused Principal Moulana Md. Omar Faruque and A.R. Hafiz Ullah, Vice-Chairman of the Managing Committee of Char Alexander Kamil Madrasha, Lakshmipur and the prosecution failed to prove that the accused forged the signature of said A.R. Hafiz Ullah. He further submits that three cheques were issued to meet the expenses of the college and the accused was suspended on 22.12.2016 with effect from 01.01.2017, although the said order of suspension was served upon the accused on 22.02.2017, but due to adverse relation between the accused and the Managing Committee of the said Madrasha, the money receipts regarding the expenditure of the said cheques amount could not be recorded in the register by the

clerk of the said Madrasha and during trial due to wrong advice of the learned Advocate for the accused, the said documents could not be proved by calling the documents under Section 94 of the Code of Criminal Procedure, 1898. Having drawn the attention of this Court to application dated 09.07.2023 along with the documents submitted by the accused through firisti, the learned Advocate submits that due to inadvertent mistake of the learned Advocate, the defence could not prove the original of the documents submitted through firisti on 09.07.2023. He prayed for sending the case on remand to the trial Court to consider the statement made in the application dated 09.07.2023 as statement of accused under Section 342 of the Code of Criminal Procedure, 1898 and to adduce evidence.

Learned Advocate Ms. Chowdhury Nasima appearing on behalf of the respondent No. 2 (ACC) submits that admittedly the accused withdrew total Tk. 4,84,895 by three cheques issued under his signature and misappropriated without giving any account to the Managing Committee. During trial, the prosecution proved the charge against the accused beyond all reasonable doubt and considering the documents submitted by the accused the trial Court passed the impugned judgment and order of conviction and sentence. Therefore, she prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Mohammad Mosiul Alam who appeared along with learned Advocate Mr. Md. Jamil Haque on behalf of the appellant and the learned Advocate Ms. Chowdhury Nasima who appeared on behalf of the respondent No. 2 (ACC), perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence it appears that under joint signatures of A.R. Hafiz Ullah, Vice-Chairman of the Managing Committee of Char Alexander Kamil Madrasha, Lakshmipur and the accused Md. Omar Faruque the Cheque No. 7349333 dated 29.12.2016 for payment of Tk. 3,12,615, Cheque No. 7349334 dated

31.01.2017 for payment of Tk. 1,19,424 and Cheque No. 7349335 dated 20.02.2017 for payment of Tk. 52,856 total Tk. 4,84,895 drawn on the Saving Account No. 1968 maintained in the name of Char Alexander Kamil Madrasha with the Sonali Bank, Char Alexander Branch were issued. In the complaint petition, it has been alleged that the accused forged the signature of A.R. Hafiz Ullah, Vice-Chairman of the Managing Committee, on the cheques. During trial, said A.R. Hafiz Ullah was not examined in the case. No evidence was adduced to prove that the accused forged the signature of A.R. Hafiz Ullah. Therefore, I am of the view that the said cheques were issued under the joint signature of A.R. Hafiz Ullah and the accused Md. Omar Faruque.

On perusal of the records, it appears that on 09.07.2023, the accused filed a application to the trial Court along with documents through firisti. Amongst those documents, there are some money receipts attested by the Officer of the Bank and other documents regarding the expenditure of the college but no original document was submitted by the accused in the trial Court regarding expenditure.

An accused person cannot convicted for any mistake made by his learned Advocate. The learned Advocate for the accused could have filed the application under Section 94 of the Code of Criminal Procedure, 1898 to the trial Court for calling the records regarding the said expenditure, Withdrawal of Tk. 4,84,895 under the joint signatures of the said Vice-Chairman of the Managing Committee of the College and the accused is admitted. I am of the view that the ends of justice would be best served, if an opportunity is given to the accused to prove the documents regarding the expenditure of the said three cheques amount. Therefore, the impugned judgment and order of conviction and sentence passed by the trial Court against the accused Md. Omar Faruque is hereby set aside and the case is sent back on remand to the trial Court.

The trial Court is directed to consider the application dated 09.07.2023 filed along with the documents as statement under Section 342 of the Code of Criminal Procedure, 1898 and allow the accused to prove the original documents regarding the expenditure of said three cheques amount.

The trial Court is directed to dispose of the case expeditiously considering the evidence already adduced by the prosecution and other evidence, if any, adduce by the defence during trial of the case.

In the result, the appeal is disposed of sending the case on remand to the trial Court.

Send down the lower Court's records at once.